

**DEC 14 2005**

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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

JUAN ZUNIGA TORRES,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-75429

Agency No. A75-682-297

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Juan Zuniga Torres, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") order denying his request for cancellation of removal.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because Torres raises legal questions, we have jurisdiction under 8 U.S.C. § 1252. *Cabrera-Alvarez v. Gonzales*, 423 F.3d 1006, 1009 (9th Cir. 2005). We review de novo the interpretation of immigration statutes, *Melkonian v. Ashcroft*, 320 F.3d 1061, 1065 (9th Cir. 2003), and may decide legal questions without first remanding to the BIA, *Chong Shin Chen v. Ashcroft*, 378 F.3d 1081, 1088 (9th Cir. 2004). We deny the petition for review.

The BIA properly determined that it lacked the authority to consider Torres' constitutional challenge to the cancellation of removal statute. *See Liu v. Waters*, 55 F.3d 421, 425 (9th Cir. 1995) (indicating that the BIA only has jurisdiction to consider constitutional claims involving procedural errors).

Torres' legal and constitutional challenge to the statute and caselaw defining exceptional and extremely unusual hardship is unpersuasive. When an applicant seeks cancellation of removal because of hardship to a qualifying child, the best interests of the child are at the very core of the analysis and the fact that the agency also considers the relative weight of a child's interests does not make them a secondary consideration. *See Cabrera-Alvarez*, 423 F.3d at 1012-13.

All remaining contentions are unpersuasive.

**PETITION FOR REVIEW DENIED.**